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THE NORTHWESTERN MUTUAL LIFE
12 INSURANCE COMPANY

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 SANFORD J. WISHNEV, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 THE NORTHWESTERN MUTUAL LIFE
INSURANCE COMPANY, a Wisconsin
22 corporation, and DOES 1-10, inclusive,

23 Defendants.
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Case No. 3:15-CV-03797-EMC

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO CONTINUE STAY AND
CASE MANAGEMENT CONFERENCE;
DECLARATION OF MICHAEL J.
STORTZ IN SUPPORT**

1 WHEREAS, on June 9, 2016, the Ninth Circuit Court of Appeals granted Defendant The
2 Northwestern Mutual Life Insurance Company's ("Northwestern Mutual") petition to appeal this
3 Court's Order denying Northwestern Mutual's motion to dismiss;

4 WHEREAS, this action has been stayed since June 30, 2016, when this Court issued an
5 order (Dkt. No. 69) staying the action "pending completion of the appellate review or further
6 order";

7 WHEREAS, appellate briefing in Northwestern Mutual's appeal has been complete since
8 January 27, 2017, and oral argument took place on October 16, 2017;

9 WHEREAS, in addition to Northwestern Mutual's appeal, there are two other appeals
10 presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No. 16-
11 15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir. Aug.
12 9, 2016);

13 WHEREAS, appellate briefing in *Martin* and *Lujan* is also complete, and oral argument in
14 those cases also took place on October 16, 2017;

15 WHEREAS, on January 18, 2018, the Ninth Circuit issued an Order asking the California
16 Supreme Court to resolve two questions of California law presented in the pending appeals;

17 WHEREAS, the California Supreme Court (Case No. S246541) has not yet decided
18 whether to grant or deny the Ninth Circuit's request;

19 WHEREAS, if the California Supreme Court grants the Ninth Circuit's request, the
20 California Supreme Court may order further briefing and oral argument before issuing its decision
21 on the two certified questions;

22 WHEREAS, if the California Supreme Court denies the Ninth Circuit's request, the Ninth
23 Circuit will issue its decision in the pending appeals;

24 WHEREAS, while Northwestern Mutual's appeal has been pending, this Court has twice
25 issued Orders continuing the Case Management Conference ("CMC") and continuing the stay of
26 this action;

27 WHEREAS, specifically, on March 10, 2017, this Court issued an Order (Dkt. No. 73)
28 continuing the next CMC to September 28, 2017 and continuing the stay through that date "or

1 pending further Order of the Court”;

2 WHEREAS, on September 19, 2017, this Court issued an Order (Dkt. No. 75) continuing
3 both the CMC and the stay to March 29, 2018 “or pending further Order of the Court”;

4 WHEREAS, the Parties through counsel have met and conferred and agree that given the
5 status of Northwestern Mutual’s appeal, and the *Martin* and *Lujan* appeals, as well as the status of
6 proceedings before the California Supreme Court, (1) the existing stay in this action should
7 continue for six more months, unless earlier terminated by the Court upon request of one or both
8 of the parties; and (2) the March 29, 2018 CMC should be continued for six months, unless earlier
9 scheduled by the Court;

10 WHEREAS, the requested continuance will not impact any other deadlines already set by
11 the Court.

12 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties through
13 their respective counsel as follows:

14 1. This action should remain stayed through September 27, 2018 or pending further
15 Order of the Court; and

16 2. The Case Management Conference currently scheduled for March 29, 2018 should
17 be continued to September 27, 2018 at 10:30 a.m., or such other date as the Court deems proper.

18 3. The parties shall file a Case Management Statement on or before September 20,
19 2018 or as hereafter ordered by the Court.

20 IT IS SO STIPULATED.

21
22 Dated: March 9, 2018

DRINKER BIDDLE & REATH LLP

23
24 By: /s/ Michael J. Stortz

Michael J. Stortz
Marshall L. Baker

25
26 Attorneys for Defendant
27 THE NORTHWESTERN MUTUAL LIFE
28 INSURANCE COMPANY

1 Dated: March 9, 2018

BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP

2
3 By: /s/ Robert M. Bramson
4 Robert M. Bramson

5 Attorneys for Plaintiff
6 SANFORD J. WISHNEV

7 **Attestation Pursuant to Civil Local Rule 5-1(i)**

8 Pursuant to Civil Local Rule 5-1(i), I, Michael J. Stortz, hereby attest that I have obtained
9 concurrence in the filing of this document from the other signatory to this document.

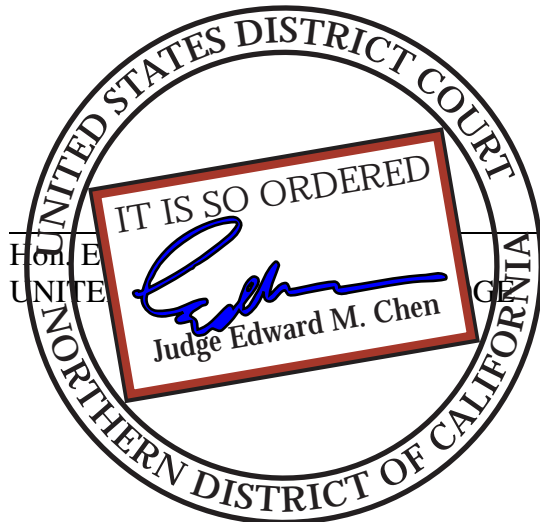
10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed this 9th day of March, 2018 in San Francisco, California.

12
13 /s/ Michael J. Stortz
14 Michael J. Stortz

15 **[PROPOSED] ORDER**

16 Pursuant to Stipulation, **IT IS SO ORDERED.**

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20 Date: 3/14/18



DECLARATION OF MICHAEL J. STORTZ

I, Michael J. Stortz, declare as follows:

1. I am an active member in good standing of the Bar of the State of California, admitted to practice before this Court, and a partner with the firm of Drinker Biddle & Reath LLP, attorneys of record for Defendant The Northwestern Mutual Life Insurance Company (“Northwestern Mutual”) in the above-entitled action. I make this Declaration in support of the parties’ Stipulation to Continue Stay and Case Management Conference. If called, I could and would testify to the matters set forth herein.

2. This action has been stayed since June 30, 2016. Since that time, Northwestern Mutual has pursued an appeal in the Ninth Circuit as to this Court’s interlocutory Order denying Northwestern Mutual’s motion to dismiss.

3. In Northwestern Mutual’s appeal, the parties have filed their respective briefs, and appellate briefing has been complete since January 27, 2017. Oral argument took place on October 16, 2017.

4. In addition to Northwestern Mutual’s appeal, there are two other appeals presenting the same issues pending in the Ninth Circuit: *Martin v. Metro. Life Ins. Co.*, No. 16-15690 (9th Cir. Apr. 15, 2016) and *Lujan v. New York Life Ins. Co.*, No. 16-16401 (9th Cir. Aug. 9, 2016).

5. The appellate briefing in *Martin* and *Lujan* is also complete, and oral argument in those cases took place on October 16, 2017.

6. On January 18, 2018, the Ninth Circuit issued an Order asking the California Supreme Court to resolve two questions of California law presented in the pending appeals. The California Supreme Court (Case No. S246541) has not yet decided whether to grant or deny the Ninth Circuit’s request.

7. On March 10, 2017, and again on September 19, 2017, this Court issued Orders that continued both the stay and the date for the CMC by six months. A CMC is currently scheduled for March 29, 2018.

8. There is good cause to continue the stay for an additional six months, and to continue the March 29, 2018 CMC to September 27, 2018, as Northwestern Mutual’s appeal, *Martin*, and *Lujan* each present the same threshold questions of law, the resolution of which may obviate the need for any further proceedings in this Court.

9. The requested continuance will not impact any deadlines already set by the Court.

10. To date, the other time modifications in this case are as follows: on August 31, 2015, the Court approved the Parties' Stipulation As to Filing of the Amended Complaint; on November 5, 2015, the Court reset the hearing on Northwestern Mutual's Motion to Dismiss Plaintiff's First Amended Complaint and reset the CMC to November 20, 2015; on November 20, 2015, the Court again reset the CMC to January 21, 2016; on January 12, 2016, the Court again reset the CMC to March 3, 2016; on February 23, 2016, the Court granted Northwestern Mutual's Motion to Continue the CMC to March 24, 2016; on May 31, 2016, the Court approved the Parties' stipulated request to continue the CMC to June 30, 2016; on March 2, 2017, the Court rescheduled the March 30, 2017 CMC for March 28, 2017; on March 10, 2017, the Court continued the CMC to September 28, 2017; and on September 19, 2017, the Court continued the CMC to March 29, 2018.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of March, 2018 at San Francisco, California.

/s/ Michael J. Stortz
Michael J. Stortz